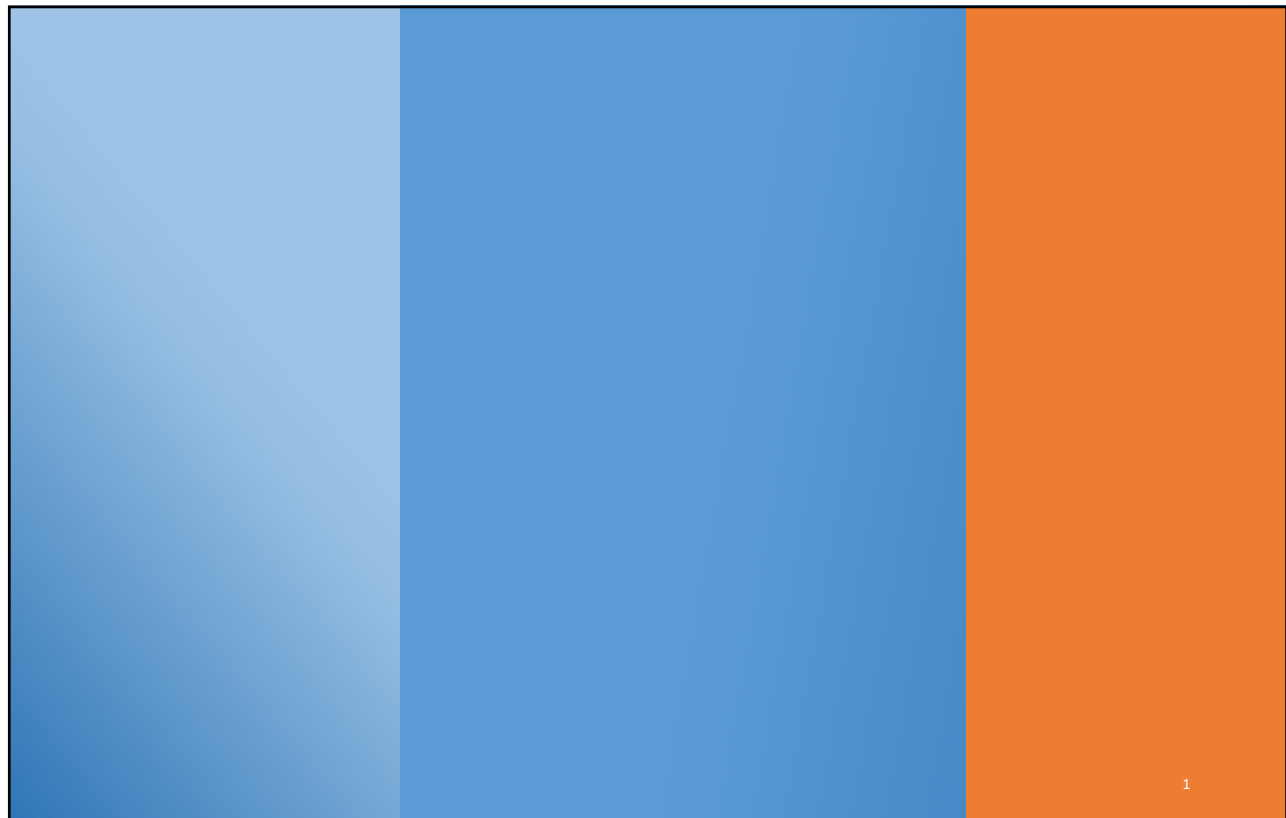
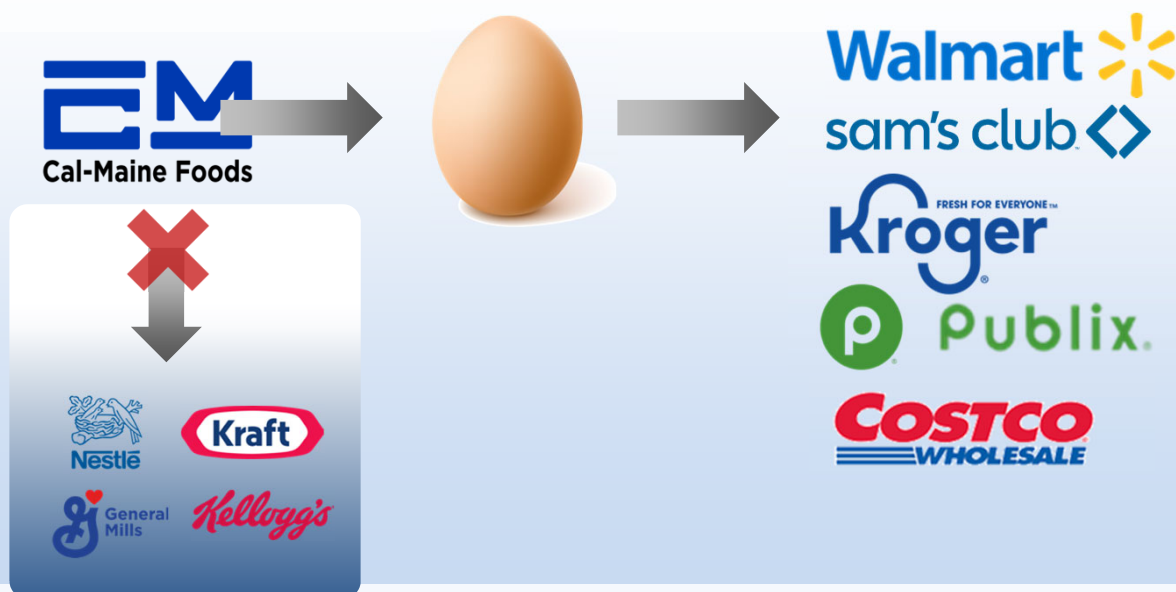
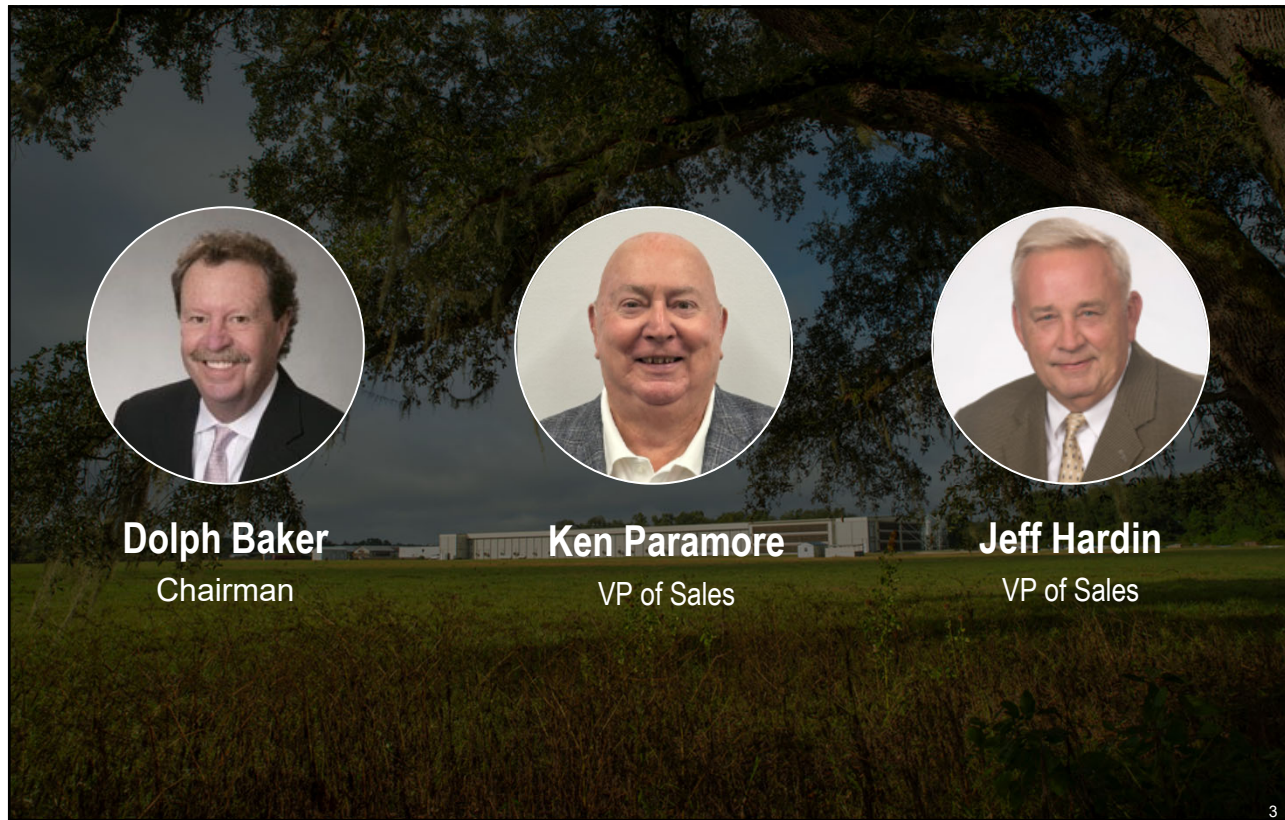


Exhibit A



Cal-Maine: Focused on Its Customers





Cal-Maine Independent of UEP and the Competition



Dolph Baker
EM
Cal-Maine Foods

22 Q. Tell the members of the jury why Cal-Maine does what it
23 does.

24 A. We do what's in our best interest. We have shareholders,
25 and, you know, we run our company. UEP does not run our
1 company.

17 Q. Did you ever make any inquiry at any time to find out what
18 your suppliers were doing -- I'm sorry, what your
19 competitors --

20 A. No, sir.

Cal-Maine Had Nothing to Hide



Dolph Baker



6 Q. Sir, was there anything about the certified program that
7 you were attempting to hide from your customers?
8 A. No, sir, we were very transparent and wanted to share this
9 study with them.

Trial Transcript 1822:6-9, 1671:12-18

5

Agenda

- 1** Molts and Slaughters
- 2** Exports
- 3** Certified Program
- 4** The Relevant Market
- 5** Plaintiffs' Failure of Proof

6

Instruction #43: Injury before 2004

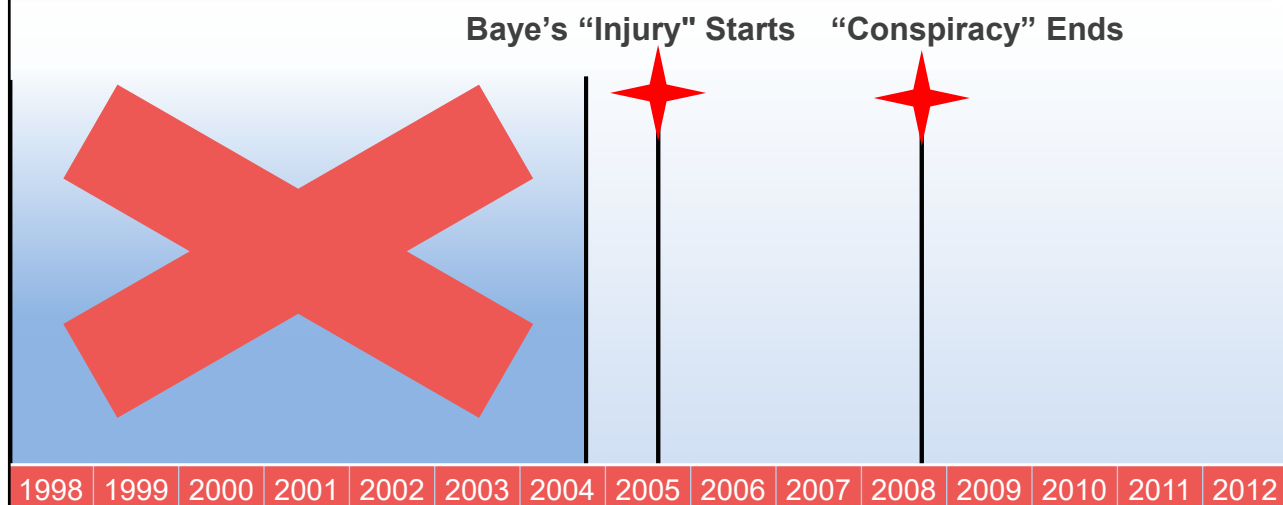
Evidence of competitive harm or injury before October 2004 cannot be considered by you in determining whether the actions of Defendants and co-conspirators caused competitive harm or **injured Plaintiffs** from October 2004 to December 2012.

You can consider evidence before October 2004 in determining whether any Defendant entered or participated in the alleged conspiracy

Page 49

7

Focus on the Relevant Time Period for Injury



8

MOLTS AND SLAUGHTERS

9

Molts & Slaughters: Standard Egg Production Practices



Induced Molts Help Productivity.



**Slaughters Remove Older, Less Productive Hens.
Replace with Younger, More Productive Hens.**

10

Molts & Disposals Serve a Legitimate Business Purpose



Dr. Armstrong

Scientific Advisory Committee

5 Could you just briefly explain the purpose of a molt
6 in commercial production?

7 A. If you think about a molt, you have a flock of hens that
8 after a period of weeks, the eggs start to get brittle. The
9 birds have been producing a lot. Their body stores have gone
10 down, and you're at a point where the bird either needs to be
11 terminated, euthanized, or harvested. Molting then allows the
12 bird to be rejuvenated.

13 So molting means you're stopping egg production. The
14 bird can have a chance to rejuvenate, and then you have
15 another whole round of egg production. Sometimes it can go to
16 three cycles, two molts in the past. So you think about
17 molting from a natural situation, a bird's molt, they lose
18 feathers, etcetera, but in this case, it's a chance for the
19 bird to be rejuvenated after several weeks of producing eggs
20 every 28 hours.

Trial Tr. 3129:5-20

11

Slaughters: Replace Old Hens with Younger Hens



David Hurd



15 If you're moving out a house of older birds that are
16 laying at a lower rate of production, you're going to be
17 putting in younger birds that are immediately going to get up
18 to a higher rate of production. [...]

25 Q. And if you slaughter less productive hens and then put in
1 younger hens that are about to be more productive, again,
2 overall, would you be increasing egg production or decreasing
3 it?

4 A. You would be increasing once the young flock came in to
5 lay.

Trial Transcript 4737:15-4738:5

12

Instruction #38: Competitive Benefits

Procompetitive benefits include, but are not limited to, increasing production, lowering prices, increasing consumer choice, meeting customer demand, creating a new product, and improving product quality.

Customers' Seasonal Shell Egg Demand

sam's club

Walmart

Kroger
FRESH FOR EVERYONE™

COSTCO
WHOLESALE

Publix



Cal-Maine's Playbook



Dolph Baker



12 Q. The decision to slaughter or dispose of hens at the
13 105-week level and the 63-week level, were those discussed in
14 the Monday morning meetings and was it determined that those
15 were right for Cal-Maine?

16 A. Yes.

17 Q. Did you ever make any inquiry at any time to find out what
18 your suppliers were doing -- I'm sorry, what your
19 competitors --

20 A. No, sir.

Trial Transcript 1863:1-11

15

Cal-Maine's Statements Didn't Have an Impact



Dr. Walker

18 Is it your opinion that Dolph Baker was wrong by
19 thinking that Cal-Maine would increase egg prices by
20 committing in writing, along with others in the industry, to
21 engage in early slaughter and flock reduction?

22 A. I don't know what Mr. Baker thought. I don't know that he
23 thought that.

24 Q. But you think he'd be wasting his time by committing in
25 writing to engage in this practice, correct?

1 A. All one-half of a second it took him to sign his name.

2 It's a waste of that half second.

Trial Transcript 5541:18-5542:2

16

Competitors Took Advantage



Marcus Rust



3 Q. And you understood when you joined the UEP, that for many
4 years, the UEP had been involved with recommending supply
5 restrictions, right, sir?

6 A. The UEP always collected this USDA data that the U.S.
7 government collected that says how many -- what the hatch is,
8 what the inventory is. And then UEP would take all those
9 government numbers and come back to their members and offer
10 voluntary suggestions of what you should do to have more birds
11 or less birds, the market may be here, it may be there.

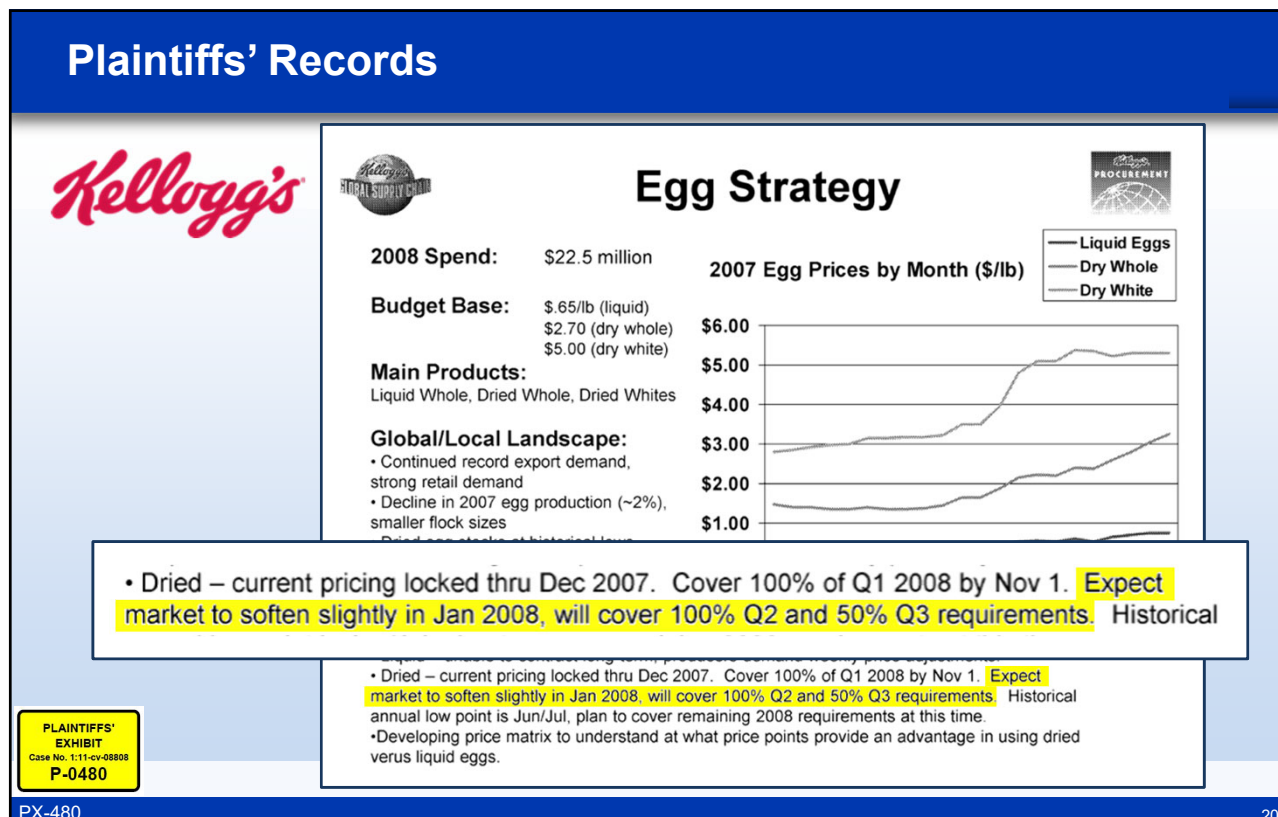
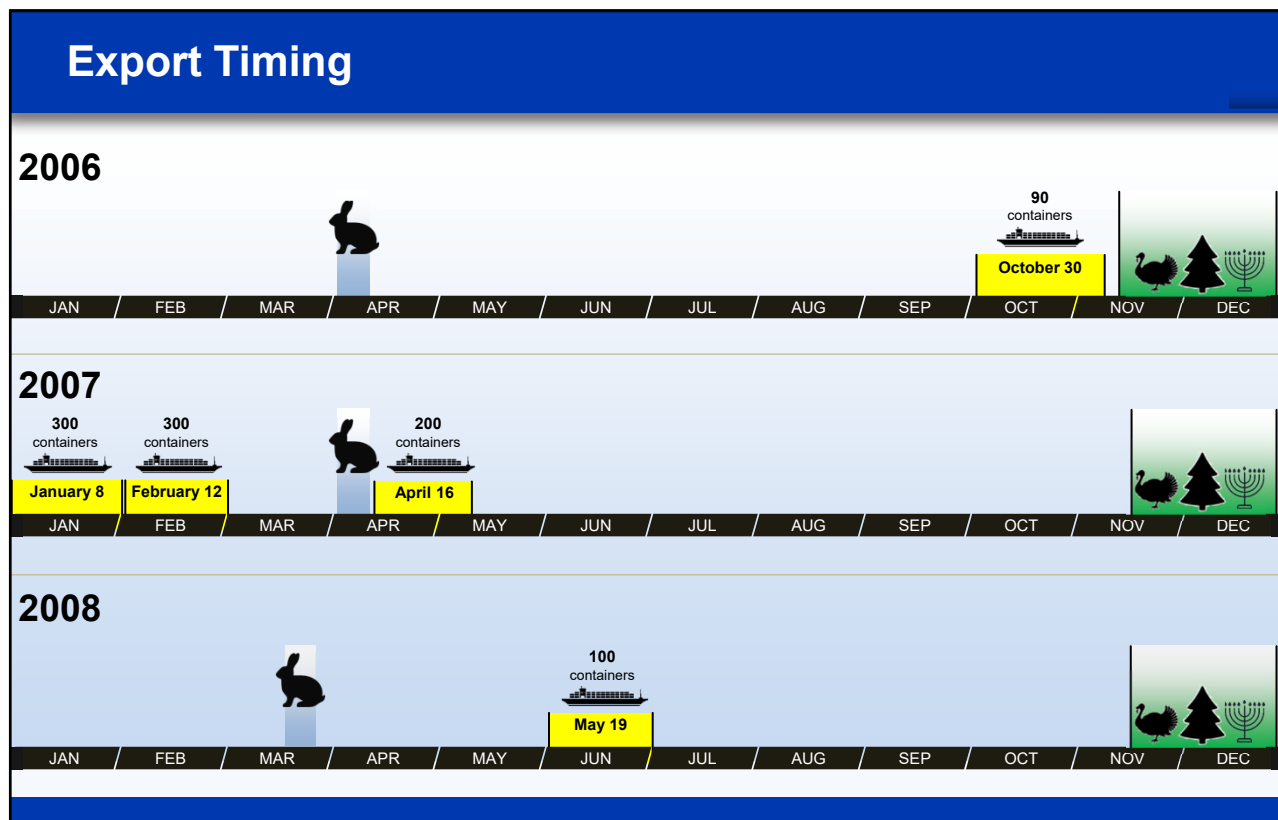
12 And then producers would -- some of them would listen
13 to it and some would, oh, if they're going to do that, I'm
14 going to build more houses or add more production, have more,
15 then.

Trial Transcript 4423:3-18

17

EXPORTS

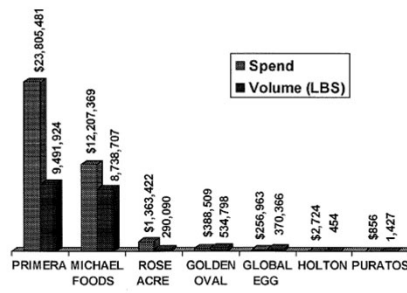
18



Plaintiffs' Records



Egg Spend is Concentrated with Two Key Suppliers



•Sourcing Strategy

–Seasonal buy of “cheap” eggs to dry and store for later use

–Prices based off of UB breaking stock market

–Key drivers

•Industry expansion
•>2% annually

•Cheap feed: corn and soybean meal

DEFENDANTS'
EXHIBIT
Case No. 1:11-cv-08808
D-0013



GENERAL MILLS

GMI Confidential

DX-13

21

Why Export? “Breakers” Not Taking Surplus

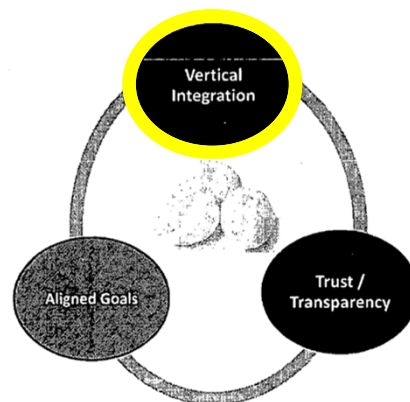


There are Major Structural Changes in Industry

- Industry growth / s year
- More breaking stock vertical integration
- Production costs c
- Growing global de
- Bird flu is a risk

Why Rembrandt?

- A Foundation for Success -



DEFENDANTS'
EXHIBIT
Case No. 1:11-cv-08808
D-0016

DEFENDANTS'
EXHIBIT
Case No. 1:11-cv-08808
D-0035

DX-16

22

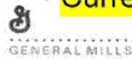
Why Export? International Demand Increased



DEFENDANTS'
EXHIBIT
Case No. 1:11-cv-08808
D-0013

US is Seeing New Export Demand from Europe and Asia

- US shell egg exports have doubled in last year
 - Egg product exports up 18%
- Stricter animal welfare laws in Europe
 - Less European production allows for more US imports
- High energy costs encourage export shipments of high value products like eggs instead of corn or meal
- Bird flu concerns continue
 - Recently found in Germany
- Currency benefits; weak dollar



GMI Confidential

DX-13

23

Exports: Demand Begins with a Foreign Buyer

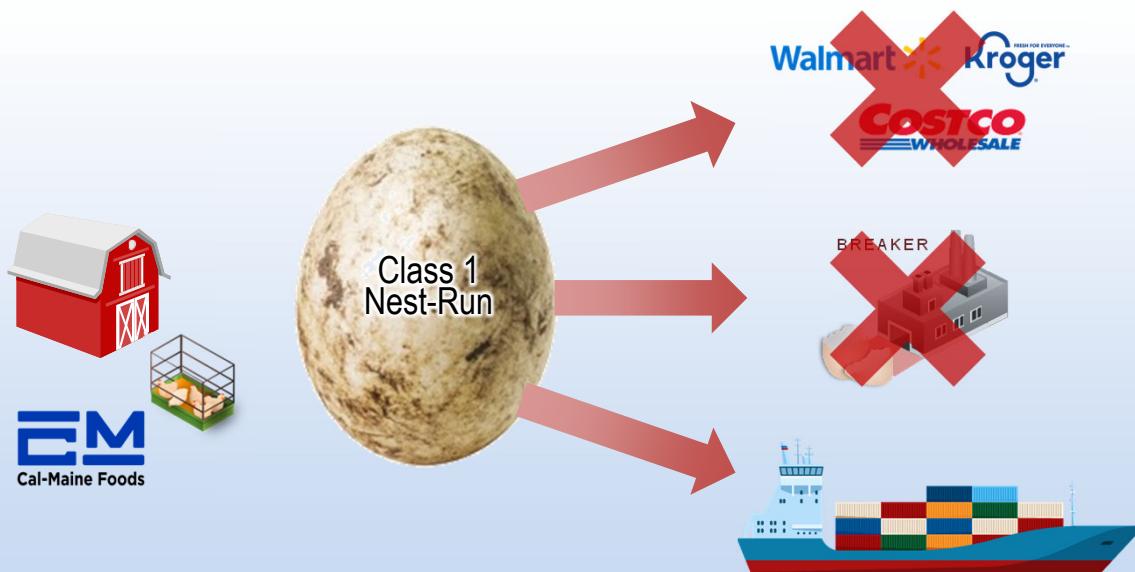
Phyllis Blizzard Read-In Testimony

23 Q. Prior to September of 2010, who at UEP made the
24 determination whether or not an export to a European market
25 should take place?

1 A. We were called by an exporter. We would take it to the
2 board.

24

Exports: Outlet for Nest Run Eggs



25

Cal-Maine Exported Surplus Eggs

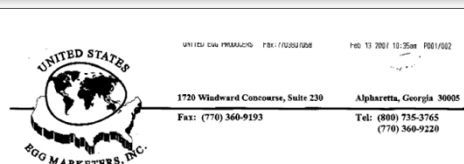


Dolph Baker



3 Q. I think there was a term that you heard in opening
 4 argument "sell them or smell them." Is that a familiar term
 5 to an egg producer?
 6 A. Yes, it is.
 7 Q. Can you explain to the jury -- I think it's obvious. But
 8 can you explain in your words what that means.
 9 A. Yeah. You got to sell them or you have to export them.
 10 You have to do something with them because there is a limited
 11 shelf life.

Cal-Maine Exported Nest Run Eggs



February 13, 2007

TO: USEM Member

From: Gene Gregory

Subject: Export Order A

By an overwhelming majority the

containers for delivery between the

Your percentage share of this export

This order calls for the delivery of

extra large may be substituted per

packed in 2004 test cases with 211

disease free certification, and post

customer will require some eggs to

loose eggs.

You are encouraged to call Phyllis

including the ports for delivery.

We would prefer that you either pack and ship your own eggs or purchase your commitment in

the open market. If, however, you are unable to do this, then you may request UEP's egg traders

to purchase your share. We intend to return your intentions as quickly as possible so please return

the attached confirmation by fax to (770) 360-7058 or (770) 360-9193 today if at all possible.

We again will be using 10-cent freight equalization as an estimate for those shipping their own

eggs. USEM will pay 32 cents per dozen to those shipping their own eggs plus their actual

freight costs, less the freight equalization. (Some way freight was handled on export just

completed).

For those requesting UEP traders to purchase their commitment in the open market, you will be

involved the difference between the sale price of 31 cents and the average price we have to pay to

purchase all the eggs in this pool. We would prefer to purchase all these eggs from USEM

members if at all possible.

in Response To the Attached Commitment is Needed Immediately.

Your percentage share of this export is 39,685 cases.

This order calls for the delivery of 48# **class #1 gradable nest run eggs.**

PLAINTIFFS'
EXHIBIT
Case No. 1:11-cv-08808
P-0059

27

Cal-Maine: Transparent with Customers

From: Ken Paramore [mailto:kparamore@cmfoods.com]
Sent: Tuesday, January 16, 2007 7:05 PM
To: 'McNeely, Pharr 048'
Subject: Egg Market

-----Original Message-----

From: Ken Paramore [mailto:kparamore@cmfoods.com]

Sent: Tuesday, January 16, 2007 2:05 PM

To: 'McNeely, Pharr 048'

Subject: Egg Market

Pharr

Per our conversation this am, the egg market is rising rapidly everyday at this time. Primary reasons behind this are the **normal reduction in flock size after the holiday period and an unexpected 300 load export order to Europe.** Our company as well as others in the industry are paying a premium for the few non committed eggs available in order to fill our customer orders. There could be as much as a 20% increase in the egg market even from today's quote. The export is scheduled to ship thru Feb 2 and with Easter coming in early April, supplies are expected to remain tight for next few weeks? Obviously, this is a best guess scene at this point. Please advise if more info is required and I will keep you updated as we go forward. We sincerely appreciate your understanding and the opportunity to serve!

PLAINTIFFS'
EXHIBIT
Case No. 1:11-cv-08808
P-0437

28

THE CERTIFIED PROGRAM

29

PETA Focused on Cage Space



On behalf of more than 10 million members and supporters, I am writing to request a copy of your company's minimal standards for the welfare of animals raised for your beef, pork, chicken, egg, and dairy products and to urge you to meet or exceed the new animal welfare standards set by McDonald's, Burger King, and Wendy's as soon as is humanely possible.

PETA is a 501(c)(3) nonprofit organization. PETA is a member of the Humane Society of the United States.



September 27, 2001

Mr. Lee Scott, CEO
Wal-Mart Neighborhood Market
702 S.W. Eighth St.
Bentonville, AR 72712-6209



2. **Cease buying eggs from suppliers that give hens less than 75 square inches of space per bird with the ultimate goal of phasing out battery cages altogether.** Currently, suppliers cram hens into wire mesh battery cages with about as much space per bird as one-half of a sheet of standard paper. This abuse, which has been condemned as cruel by the entire European Union, is the *modus operandi* for America's egg suppliers. The average stocking density for henhouses across the United States is an abysmal 48 to 54 square inches per bird—these conditions don't allow hens enough space to spread even one wing their entire lives, and losses from death are in excess of 16 percent in many systems.

DEFENDANTS'
EXHIBIT
Case No. 1:11-cv-08808
D-0718

30

PETA Focused on Cage Space



May 2, 2001 07:00



August 2, 2001

Karen Brown
Food Marketing Institute



2. **Cease buying eggs from suppliers that give hens less than 75 square inches of space per bird with the ultimate goal of phasing out battery cages altogether.** Currently, suppliers cram hens into wire mesh battery cages with about as much space per bird as one-half of a sheet of standard paper. This abuse, which has been condemned as cruel by the entire European Union, is the *modus operandi* for America's egg suppliers. The average stocking density for hen houses across the United States is an abysmal 48 to 54 square inches per bird—these conditions don't allow hens enough space to spread even one wing their entire lives, and death losses are in excess of 16 percent in many systems.

DEFENDANTS'
EXHIBIT
Case No. 1:11-cv-08808
D-0658

31

Instruction #32: Membership

In determining whether a defendant was a member of the alleged conspiracy, you should **consider only the evidence about that particular defendant's statements and conduct**, including any evidence of that defendant's knowledge and participation in the events involved and any other evidence of that particular defendant's participation in the conspiracy alleged.

32

Instructions #48: Member Liability

A person or business that belongs to an association or trade association does not become liable for violating the antitrust laws simply because the association or trade association is liable for such violation. Instead, Plaintiffs must prove that the Defendant in question knew of and participated in the conduct that you find unlawful.

The issue you must decide is whether Plaintiffs proved that Defendants used the membership organization and its challenged practices in an anticompetitive manner.

Page 54

33

Cal-Maine Is Not UEP



Gene Gregory



Al Pope



Don Bell



Phyllis Blizzard



Linda Reickard

34

McDonald's Targeted by Animal Activists



"McLibel" trial



EU Adopts Ban on
Cages for Hens

EUROPE

35

McDonald's Targeted by Animal Activists



DEFENDANTS'
EXHIBIT
Case No. 1:11-cv-08808
D-0736

DX-736

36

McDonald's Reacted: 72 Inches by Dec. 2001

August 15, 2000

To: McDonald's US Shell Egg Suppliers

From: Bruce Feinberg
Senior Director Quality Systems
McDonald's USA

RE: McDonald's Welfare Guidelines for Egg Laying Hens

Continuing McDonald's commitment to animal welfare, McDonald's USA has made some significant decisions that will raise the bar in the area of animal welfare. These decisions represent McDonald's leadership within the industry and are being implemented after extensive study and consultation with scientific, industry and third party experts conducted over the past year.

McDonald's has recently formed the McDonald's Animal Welfare Council (MAWC), made up of leading academic and non-government experts that play a

August 15, 2000

To: McDonald's US Shell Egg Suppliers

From: Bruce Feinberg
Senior Director Quality Systems
McDonald's USA

RE: McDonald's Welfare Guidelines for Egg Laying Hens

- ◆ To increase the space of egg laying hens to a minimum of 72 sq. inches per bird (an average increase of 50%)

genetic improvement work will eliminate the need to deak hen.

This is a leadership initiative – McDonald's is the first major egg buyer in the U.S. to implement these changes.

DEFENDANTS'
EXHIBIT
Case No. 1:11-cv-08808
D-0182

DX-182

37

TIMELINE



Aug 2000
McDonald's
Announces 72"
after PETA attacks

2000

2001

2002




Sep 2000
Walmart
Targeted

38

Walmart Targeted by PETA in 2000

September 27, 2001

Mr. Lee Scott, CEO
Wal-Mart Neighborhood Market
702 S.W. Eighth St.
Bentonville, AR 72712-6209



September 27, 2001

Mr. Lee Scott, CEO
Wal-Mart Neighborhood Market
702 S.W. Eighth St.
Bentonville, AR 72712-6209

Dear Mr. Scott:

On behalf of People for the Ethical Treatment of Animals (PETA) and our more than 750,000 members and supporters, I am writing to request a copy of your company's minimal standards for the welfare of animals raised by your beef, pork, chicken, egg, and dairy product suppliers and to urge you to meet or exceed the new animal welfare standards set by McDonald's, Burger King, and Wendy's as soon as is humanly possible.

PETA made a similar request in a letter sent to you nearly a year ago but received no response.

On behalf of People for the Ethical Treatment of Animals (PETA) and our more than 750,000 members and supporters, I am writing to request a copy of your company's minimal standards for the welfare of animals raised by your beef, pork, chicken, egg, and dairy product suppliers and to urge you to meet or exceed the new animal welfare standards set by McDonald's, Burger King, and Wendy's as soon as is humanly possible.

PETA made a similar request in a letter sent to you nearly a year ago but received no response.

DEFENDANTS' EXHIBIT
Case No. 1:11-cv-08808
D-0718

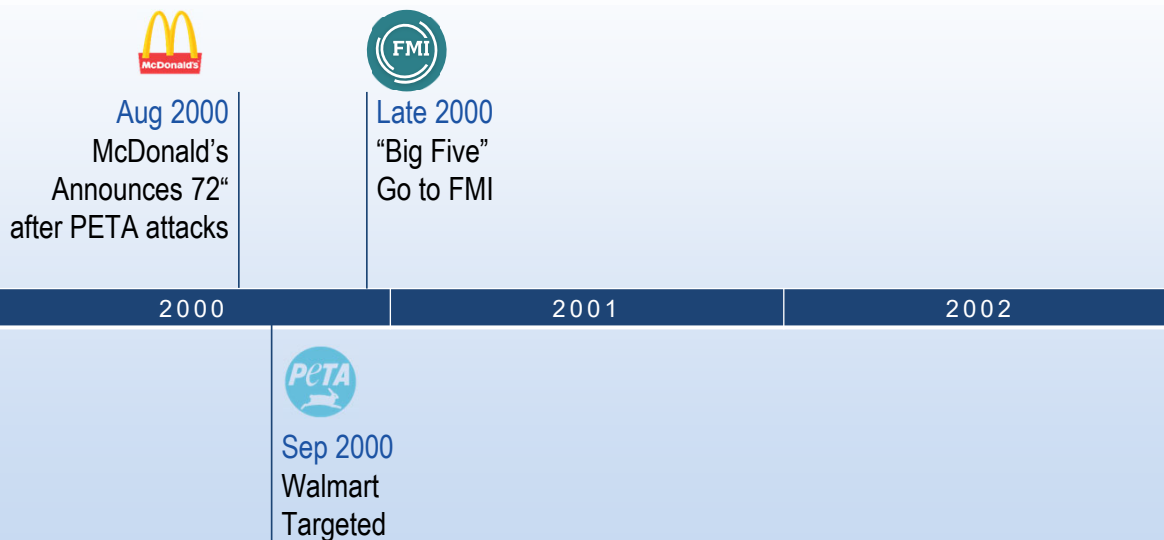
DEFENDANTS' EXHIBIT
Case No. 1:11-cv-08808
D-0718

D-0718-0001 of 0005

DX-718

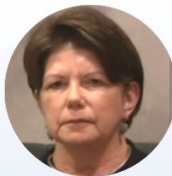
39

TIMELINE



40

Grocers Go to FMI for a Level Playing Field



Karen Brown



49:20 Q. Why don't you turn back to what
 49:21 was marked as Brown-2, the article. I'll
 49:22 direct your attention to page 656. The first
 49:23 full paragraph on that page. The second
 49:24 sentence in that paragraph reads, "To this
 49:25 end, late in 2000, the Food Marketing
 50:02 Institute...was asked by five member
 50:03 companies (Ahold...; Albertsons...;
 50:04 Kroger...; Safeway...; and Wal-Mart
 50:05 Stores...) to develop a voluntary policy and
 50:06 programme to address animal welfare that the
 50:07 entire supermarket industry could embrace."
 57:05 Q. I said so is it fair to say
 57:06 that these members were looking to FMI to
 57:07 develop a single industry approach to the
 57:08 animal welfare issues they were concerned
 57:09 about?
 57:11 THE WITNESS: They wanted FMI to
 57:12 work with them on developing an
 57:13 industry position.

41

TIMELINE



Aug 2000
 McDonald's
 Announces 72"
 after PETA attacks



Late 2000
 "Big Five" Grocers Go
 to FMI

2000

2001

2002



Sep 2000
 Walmart
 Targeted



Sep 2001
 PETA Continues
 Pressure on Walmart

42

PETA Ramps Up Pressure on Walmart in 2001

September 27, 2001

Mr. Lee Scott, CEO
Wal-Mart Neighborhood Market
702 S.W. Eighth St.
Bentonville, AR 72712-6209

Dear Mr. Scott:

On behalf of People for the Ethical Treatment of Animals (PETA) and our more than 750,000 members and supporters, I am writing to request a copy of your company's minimal standards for the welfare of animals raised by your beef, pork, chicken, egg, and dairy product suppliers and to urge you to meet or exceed the new animal welfare standards set by McDonald's, Burger King, and Wendy's as soon as is humanly possible.

In fairness, you should know that since PETA has called off its aggressive national campaign against Wendy's, we will soon turn our attention to grocery store chains. Please assure us that you plan to meet or exceed the commitments to animal welfare made by McDonald's, Burger King, and Wendy's. We stand ready to meet with you, to assist you, and to work with you to improve the lot of the countless animals who depend on you for the relief of their suffering.

September 27, 2001

Mr. Lee Scott, CEO
Wal-Mart Neighborhood Market
702 S.W. Eighth St.
Bentonville, AR 72712-6209

DEFENDANTS' EXHIBIT
Case No. 1:11-cv-08808
D-0718

0718 2001.09.27_Letter from PETA_PETA SA

DX-718

43

Cal-Maine Faced Uncertainty in the Market

September 10, 2001

To: Kelli Crossland
From: Jeff Hardin
RE: Animal Husbandry questions

Cal-Maine supports the UEP in most all it's efforts and was a part of the committee reviewing the Animal Husbandry program. We intend to comply with all parts of the program excepting the cage density of 60 and 67 square inches. It would be our contention that anything over a 53.3 square inch density would be considered a specialty egg because of the costs associated with moving to such low stocking densities.

OK Jeff/Hardin

DEFENDANTS' EXHIBIT
Case No. 1:11-cv-08808
D-0185

09-01_Memo from Hardin_CM0010095

DX-185

44

Cal-Maine Couldn't Invest in Uncertainty

2000-2001

Cal-Maine Foods

Diversity
Cal-Maine
Employment
American,
Benefits
We offer a
company life
insurance,
Liabilities
Cal-Maine
partnership
best estimate
reiterate "I
in a comm
both up and
Cal-Maine
McDonald's
commit to
Rossburg r
provide fin
McDonald's

Cal-Maine has assumed that the McDonald's specialty egg program would be a long term partnership legally binding the companies in a financial way. Our quote is based on our best estimation of costs given the factors within our "known control". We do want to reiterate "known control". The program McDonald's has requested has never been done in a commercial setting and there are many variables which we assume will impact costs, both up and down.

Cal-Maine's commitment is to build new facilities or retro-fit existing facilities to fit McDonald's needs for animal welfare, food safety, and supply contingencies. We also commit to operate those facilities in the most efficient manner possible. (see attached Rossburg report) Our expectation is that McDonald's will compensate us fairly and provide financial commitment since the added costs associated with producing the McDonald's specialty egg will exceed the 10 year average profit for the egg industry.

DEFENDANTS'
EXHIBIT
Case No. 1:11-cv-08808
D-1188

DX-1188

45

Cal-Maine Faced Uncertainty in the Market



Dolph Baker



Cal-Maine Foods

13 Q. With respect to McDonald's, McDonald's made their own
14 decision?

15 A. That is correct.

16 Q. What happened several months after McDonald's made their
17 decision about 72 inches?

18 A. Burger King came out with their spec at 75 inches.

19 Q. Do you remember what Wendy's did?

20 A. I don't.

21 Q. When that began to happen, what were you concerned about
22 as an egg producer who has cages?

23 A. Every customer having a different spec, one-upmanship.

24 Q. And do you understand FMI was concerned about that as they
25 contributed to the process?

1 A. Yes, sir.

Cal-Maine Faced Uncertainty in the Market



Jeff Hardin

 Cal-Maine Foods

4 Q. Now, from your perspective in sales at Cal-Maine at that
 5 time, what was -- what were the issues that would have arisen
 6 if you had McDonald's at 72 square inches and Walmart at 60 to
 7 67 square inches per bird?

8 A. Well, by that time, Walmart was bigger than McDonald's was
 9 as far as our sales within our company.

10 And I've got two different customers, one wanting
 11 72 square inches, one wanting 60 or 67 square inches. They
 12 haven't even decided yet which one they want. So they're
 13 trying to decide.

14 And then I can -- you know, we're talking internally,
 15 and you can see where Kroger may want to -- well, let's -- we
 16 think 74 inches is the best. So they say 74. And then Burger
 17 King is already at -- I don't remember what Burger King was,
 18 but 78 or 80. And then the next one might be Albertson's, and
 19 they might say, well, we like 82 square inches. And then you
 20 might have someone else come along and say, well, that's going
 21 to cost too much money. I don't want to do this. I want mine
 22 at 64.

Trial Transcript 3762:4-22

47

Cal-Maine Discussing Price Impact of FMI Program

March 12, 2002

To: Kelli Crossland
 From: Jeff Hardin
 RE: Business review 2001

DEFENDANTS'
 EXHIBIT
 Case No. 1:11-cv-08808
 D-0191

We first want to thank you for the business we currently enjoy with Walmart. In 1998, I made my first call to Mark Phillips and we opened our first warehouse. Phillips, NC, is a region of 1998. Today, we are still active, we supply our warehouses for you and look forward to continuing to grow with Walmart.

March 12, 2002

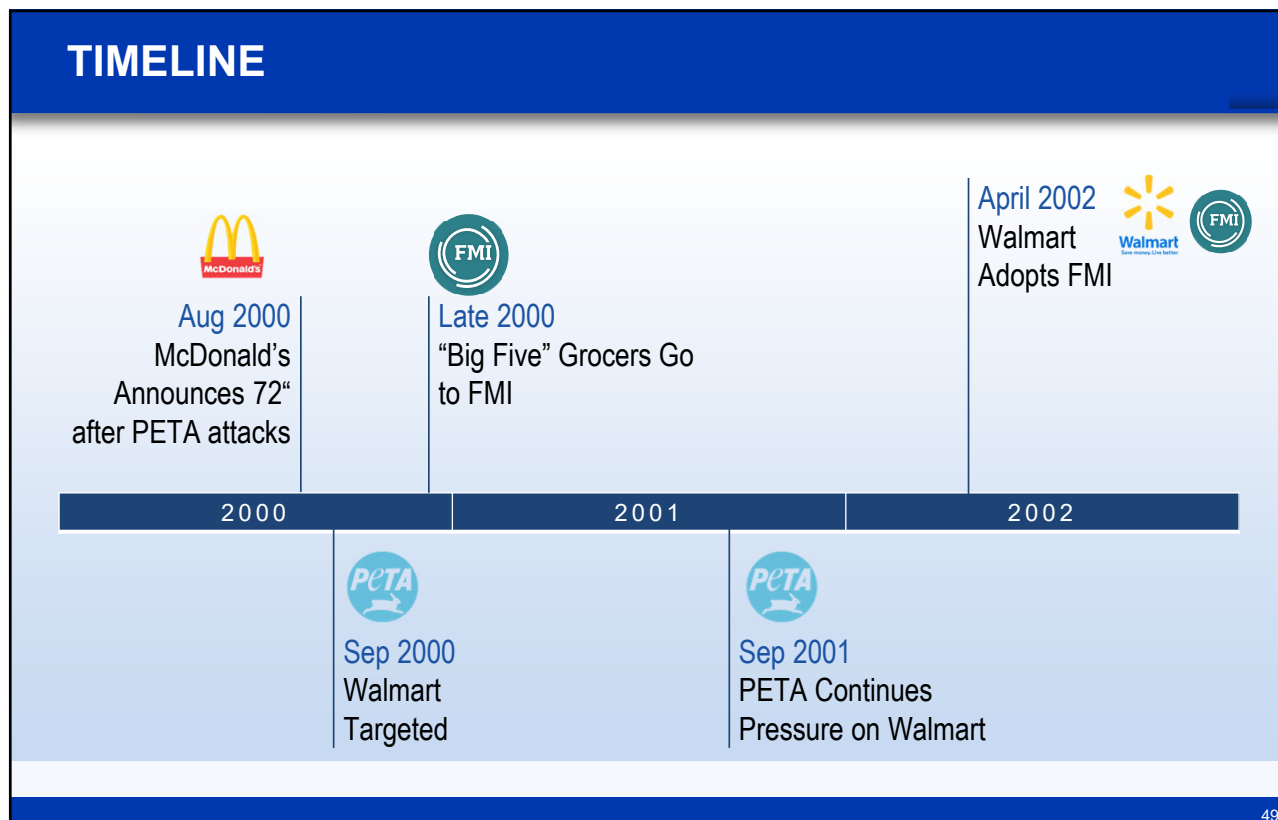
To: Kelli Crossland
 From: Jeff Hardin
 RE: Business review 2001



We expect to see significant changes in the egg market this calendar year. The egg industry is in its third calendar year of losses, which is impacting the producer's ability to expand. Hatch numbers are down, layers in production is down, and we are down to about 60 producers with more than 1 million hens. These factors combined with the new FMI animal welfare standards going into affect April 1 will drive the market from the supply side and will impact prices. I have included some industry statistics indicating that by July of this year the industry will drop below 270,000,000 hens in the flock with and average of 275,000,000 for the year. This does not include the animal welfare impact.

DX-191

48



49

Walmart Implemented the FMI Standards in April 2002

Walmart Stores, Inc.

"Best in Class"

Fresh Shell Egg Program

Animal Welfare has been, and continues to be, an important concern for Walmart and its' consumers. In April of 2002, Walmart, in conjunction with FMI, exclusively adopted the United Egg Producers (UEP) Animal Care Certified (ACC) program for the production of eggs.

¹ | Walmart "Best in Class" Fresh Shell Egg Program

DEFENDANTS'

EXHIBIT

Case No. 1:11-cv-08808

D-0639

50

Walmart's Position: Get On Board or Get Out



Gary Pickett



24 Q. As of -- as of April of 2002, could Cal-Maine get business
25 if they weren't UEP certified?

[...]

4 A. No. They would be excluded from being a supplier.

Trial Transcript 4217:9-16

51

TIMELINE


Aug 2000
McDonald's
Announces 72"
after PETA attacks


Late 2000
"Big Five" Grocers Go
to FMI


April 2002
Walmart
Adopts
FMI

June 2002
FMI
Announcement 

2000

2001

2002



Sep 2000
Walmart
Targeted



Sep 2001
PETA Continues
Pressure on Walmart

52

The FMI Program: The Chicken and the Egg



DEFENDANTS'
EXHIBIT
Case No. 1:11-cv-08808
D-0674

JUNE 2002 REPORT
FMI-NCCR Animal Welfare Program

JUNE 2002 REPORT FMI-NCCR Animal Welfare Program

INTRODUCTION

During the past 20 months, FMI and NCCR have been meeting in person and by conference call with our respective retail member committees, our independent advisors and producer organizations. Our experts have reviewed existing producer animal welfare guidelines, identified gaps and recommended specific changes, additions and revisions.

Share the common goal that all animals used in agriculture production be cared for in a manner that

Laying Hens

FMI and NCCR recommend to their members the 2002 guidelines of the United Egg Producers (UEP) for use with their suppliers of eggs and egg products.

UEP developed a process specifically to address animal welfare concerns in 1999 and formulated their guidelines with the input of a Scientific Advisory Committee. During the past twelve months, UEP has made significant progress on a number of their most challenging issues, including beak trimming, induced molting, space allocation, handling, transportation, handling and processing of spent hens, and euthanasia.

DX-674

53

Plaintiffs' Expert: Wrong on the Facts



Dr. Baye

14 And as I looked at the record, it's fairly clear
15 that, early on, the incentives of individual parties to join
16 the UEP and, in particular, sell certified eggs versus
17 noncertified eggs, wasn't nearly as strong as it was later in
18 the period here under Restriction 5. And that partly stems
19 from the fact that the customers weren't clamoring to buy
20 certified eggs under -- at the very beginning of the
21 guidelines.

Trial Transcript 2559:14-21

54

Cal-Maine's Customers Wanted the FMI Program



Ken Paramore



11 So you said that this process with your customers and
12 the buyers at those customers, this process went on for a
13 couple years?

14 A. Yes, two, three. I'm not -- a period of time.

15 Q. And then during that process, did you feel pressure from
16 your customers -- Publix, Winn-Dixie, Food Lion -- to provide
17 them with this program that would allow them to get these
18 animal activists off their case?

19 A. The pressure was, they wanted it as soon as it was
20 available, that, "Keep us advised." In terms like, "Ken, when
21 you see anything further -- we are monitoring it also -- keep
22 us advised. We want the program."

23 It was -- obviously, they wanted to get this group
24 off their back -- the groups, as far as special is going to
25 be. And I think the committees were helping temporarily with
1 that some as a work in progress to do that.

Trial Transcript 4564:11-4565:1

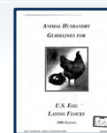
55

Plaintiffs' Conspiracy Theory Isn't Common Sense

Why Didn't Cal-Maine Go to 72 inches in 2000?



Why Not Follow FMI's Two-Year Phase-In?



Who Has the Leverage? Big Grocers or Cal-Maine?

56

Customers Held the Leverage

TOP 10 CUSTOMERS



(% Sales)

1	Wal-Mart and Sam's	36.5%
2	H.E. Butt Co.	9.6%
3	Eggs America (Sysco, US Foodservice, etc.)	
4	Food Lion	
5	Winn Dixie	
6	Publix	

DEFENDANTS'
EXHIBIT
Case No. 1:11-cv-08808
D-0283

57

Walmart Held the Leverage to Require Compliance



Gary Pickett



14 Q. Sir, who has -- from your experience as the egg buyer from
15 '04 to '08, who had the leverage in the relationship, you,
16 Walmart, or the egg supplier?
17 A. Walmart.
18 Q. Is there any doubt?
19 A. No.

Cal-Maine's Largest Customers Required Certified Eggs

July 11, 2002

Publix

Publix

To: All Public Egg Production Suppliers
From: Dave Cerna/Business Development Director
Date: July 11, 2002
Subject: FMI - NCCR Animal Welfare Guidelines

Background: On June 27, Cal-Maine Foods, Inc. (Cal-Maine) advised Publix Super Markets, Inc. (Publix) that it was a higher risk supplier due to its commitment to animal welfare guidelines.

Action: As a supplier to Publix, we are requesting that you agree to follow the guidelines as set forth in the above mentioned report (the report is included in this communiqué as an attachment). Further, Publix needs to receive in writing your company's commitment to adhere to these guidelines. This commitment must be signed by an officer of your company and returned to Publix by July 26, 2002.

Return to: Publix Super Markets, Inc.
P.O. Box 407
Lakehead, FL 33615-0407
Attention: Dave Cerna Bldg. 20

Questions: If you have any questions, comments, or concerns please feel free to contact Dave Cerna at 509 or Greg Bates at 5387.

Publix Super Markets, Inc. (943) 688-7497

DEFENDANTS' EXHIBIT
Case No. 1:11-cv-08808
D-0198

DX-198

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Cal-Maine's Largest Customers Required Certified Eggs

March 2003

Kroger

FRESH FOR EVERYONE™

CAL-MAINE FOODS, INC.
3320 WOODROW WILSON DRIVE
POST OFFICE BOX 2960
JACKSON, MISSISSIPPI 39207
PHONE: 601-948-6813

XIV. Animal Welfare Certification

Cal-Maine Foods, Inc. must show proof that they are a "Certified Company" under the UEP guidelines for the "Animal Husbandry Guidelines for U.S. Egg Laying Flocks." A copy must be attached to this contract.

Kroger will not accept any eggs from Cal-Maine Foods, Inc. that have not been 100% produced in these terms.

PACE DAIRY FOODS OF INDIANA
by Gary Stull
ITS G.M. of Egg Procurement

CAL-MAINE FOODS, INC.
by Dolph B.
ITS President

DEFENDANTS' EXHIBIT
Case No. 1:11-cv-08808
D-0210

DX-210

60

Instruction #38: Competitive Benefits

Procompetitive benefits include, but are not limited to, **increasing production**, lowering prices, **increasing consumer choice, meeting customer demand, creating a new product**, and improving product quality.

Page 41

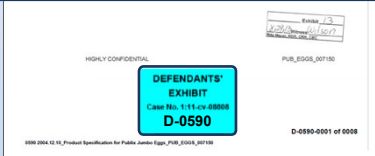
61

The New Product: Customers Wanted the Logo



PRODUCT DESCRIPTION

Publix Large Eggs are the product of the domesticated chicken hen and are in the shell. The shell must be clean, unbroken and practically normal. The air cell must not exceed 3/16 inch in depth, may show unlimited movement and may be free or bubbly. The white must be clear and at least reasonably firm so that the yolk outline is only fairly well defined when the egg is twirled before the candling light. The yolk must be practically free from apparent defects. The eggs shall be produced by flocks that are managed in accordance with the United Egg Producer's "5-Star" or "5-Star Plus" Quality Assurance/Pre-Harvest/HACCP-type Food Safety Program or an individual producer and/or state program that contains the components of the UEP program. Product shall be in accordance with the industry's animal welfare guidelines and carton shall bear the "Animal Care Certified" logo.

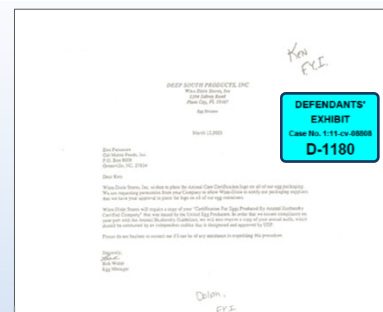


March 12, 2003

Ken Paramore
Cal-Maine Foods, Inc.
P.O. Box 8008
Greenville, NC. 27834

Dear Ken:

Winn-Dixie Stores, Inc. wishes to place the Animal Care Certification logo on all of our egg packaging. We are requesting permission from your Company to allow Winn-Dixie to notify our packaging suppliers that we have your approval to place the logo on all of our egg containers.



DX-0590; D-1180

62

The New Product: Customers Wanted the Logo

From: Lee Regensburger
Sent: Wednesday, August 31, 2005 10:48 AM
To: Beth Schell
Subject: FW: Sparboe Farms

PV1

From: Gary Pickett [mailto:Gary.Pickett@wal-mart.com]
Sent: Wednesday, August 31, 2005 10:36 AM
To: Lee Regensburger
Subject: RE: Sparboe Farms

not prior to the end of october.

our position on acc is we support the uep/fmi position. we don't have a wal-mart acc program as we don't want to add unnecessary costs to doing business with us. we require acc label be on our shell eggs cartons.

-----Original Message-----
From: Lee Regensburger [mailto:Lee.Regensburger@wal-mart.com]
Sent: Tuesday, August 30, 2005 3:39 PM
To: Gary Pickett
Subject: RE: Sparboe Farms

Hi Gary,

Would it be possible to meet with you soon? opportunities for us to do business together are being evaluated. We are currently in the process of evaluating an initial welfare program (the UEP ACC program), but to offer to you we are considering the spending one change from program (with logo change).

I am very interested in your and Wal-Mart's position.

Thank you,
Lee Regensburger

1

HIGHLY CONFIDENTIAL

05081588

DEFENDANTS' EXHIBIT
Case No. 1:11-cv-08808
D-0889

D-0889-0001 of 0004

DX-899

63

Our Customers Supported the 100% Rule



Gary Pickett

Egg Buyer 2004-2008



4 From your perspective as the egg buyer, why was it
5 important to Walmart to only purchase eggs from suppliers who
6 were complying with the 100% Rule?

15 It's very difficult to ensure -- if a plant has
16 multiple programs that they're running, the likelihood goes up
17 that the retailer would receive product that was not UEP,
18 because the same lines that run a UEP and other -- if you
19 don't have the hundred percent, you run the risk of receiving
20 uncertified product.

21 Q. And why is consistency of product important to a company
22 like Walmart?


23 A. Well, reputation is -- is very important. We thought that
24 we were making a step that was an appropriate response at that
25 time. We did not want to take the risk, which would have been
1 a higher risk, of receiving product that were not certified
2 under the UEP guidelines that we had communicated.

Trial Transcript 4214:4-4215:2

64

Our Customers Supported the 100% Rule

Issue Date: August 11, 2003



Request for Proposal (RFP)

EGGS Category

Vendor Name: Cal-Maine Foods

Issue Date: August 11, 2003
 Intent to Respond Deadline: August 14, 2003
 Confidentiality Agreement Deadline: August 14, 2003
 Corporate Brands Agreement Deadline: August 14, 2003
 RFP Questions Deadline: August 16, 2003
 RFP Response Deadline: August 22, 2003

HIGHLY CONFIDENTIAL CM00730937

DEFENDANTS' EXHIBIT
 Case No. 1:11-cv-08808
 D-0218

0218 2003.08.11_Albertsons's RFP_CM00730937 D-0218-0001 of 0032

List all your Production Facilities, and indicate the type of product produced at each site.

Location (City, State, Zip)	Type of Eggs Produced	USDA Certified? (Yes / No)	Animal Welfare Certified? (Yes / No)
Hwy 467 south Edwards, Ms. 39056	white	yes	yes
3078 Washington Road Rossburg, Ohio 45362	White, brown Egg-Lands Best	yes	Yes
1063 Zumbrum Road Union City, Ohio 45390	White	Yes	yes
11500 State Road 181 North Bremen, Kentucky 42325	White and Brown	yes	Yes
625 Avenue K Chase, Kansas 67524	white	yes	yes
220 Southern Empire Road Shady Dale, Ga. 31085	White and brown	Yes	yes
335 Industrial Park Road Hartwell, Ga. 30643	White, brown, Farmhouse	Yes	yes
Walton Street Bethune, SC 29009	white	Yes	yes
197 Cal-Maine Lane Searcy, Arkansas 72143	White, brown, Farmhouse	Yes	yes
4102 Broadway SE Albuquerque, NM 87103	White, brown, Farmhouse	Yes	yes
9729 Guthrie Road Guthrie, KY 42234	white	Yes	yes
County Road 141 Hartwood, Texas 78632	white	Yes	yes
Tung Oil Road off 375 Pine Grove, La. 70453	white	Yes	yes
1680 County Road 431 Waelder, Texas 78959	white	Yes	yes
102 Kame Road Louisburg, NC 27549	White, brown, Farmhouse, Egglands Best	Yes	yes
9246 N. 4000 W. Delta, Utah 84624	white	Yes	yes
967 County Road 401 Flatonia, Tx 78941	White, brown, Farmhouse, Egg- Lands Best	Yes	yes

65

FMI Supported the 100% Rule

From: Ken Klippen <klippen@newsflow.com>
 Sent: Thursday, July 24, 2003 2:15 PM
 To: Karen Brown <KBROWN@fmi.org>
 Subject: RE: Animal Welfare Clarifications

From: Karen Brown [mailto:KBROWN@fmi.org]
Sent: Thursday, July 24, 2003 1:57 PM
To: brian@sparboe.com
Cc: Tim Hammonds; Dortt@nrf.com; Ken Klippen
Subject: RE: Animal Welfare Clarifications

Dear Mr. Joyner:

Regarding the questions you raise about the FMI-NCCR June 2003 report on our animal welfare program:

2) Our goal is enhanced animal welfare for **all animals** in food production -- not animals used only for certain products or product categories. This is our position for all producer groups.

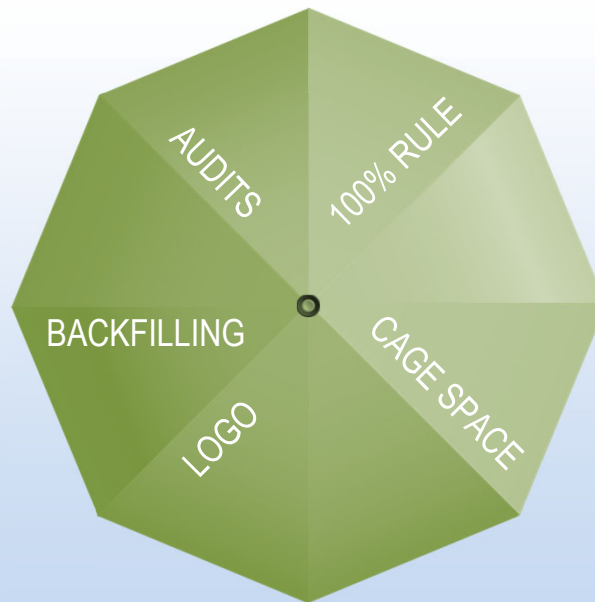
DEFENDANTS' EXHIBIT
 Case No. 1:11-cv-08808
 D-0686

D-0686 D-0686-0001 of 0003

DX-686

66

The Certified Program's 2005 Backfilling Ban



67

Cal-Maine Preexisting Policy Against Backfilling

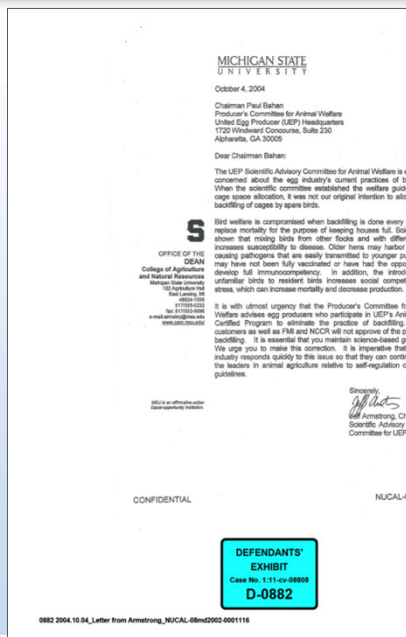


Dolph Baker



- 9 Q. Was there a brief period of time that Cal-Maine
10 experimented with backfilling shortly after the passage of the
11 animal welfare guidelines?
- 12 A. Yes, sir.
- 13 Q. Did Cal-Maine stop backfilling prior to the end of 2004,
14 whenever experimenting was done and it had stopped?
- 15 A. We experimented with a couple flocks but decided it was
16 not worth it.
- 17 Q. Okay. So by 2005, Cal-Maine had stopped backfilling?
- 18 A. Yes, sir.
- 19 Q. And it hadn't been backfilling since '98?
- 20 A. Correct.
- 21 Q. With the exception of the short period of time?
- 22 A. Correct.

The 2005 Backfilling Ban: Based on Science



Dear Chairman Bahan:

The UEP Scientific Advisory Committee for Animal Welfare is extremely concerned about the egg industry's current practices of backfilling. When the scientific committee established the welfare guidelines for cage space allocation, it was not our original intention to allow for the backfilling of cages by spare birds.

Bird welfare is compromised when backfilling is done every month to replace mortality for the purpose of keeping houses full. Science has shown that mixing birds from other flocks and with different ages increases susceptibility to disease. Older hens may harbor disease-causing pathogens that are easily transmitted to younger pullets that may have not been fully vaccinated or have had the opportunity to develop full immunocompetency. In addition, the introduction of unfamiliar birds to resident birds increases social competition and stress, which can increase mortality and decrease production.

It is with utmost urgency that the Producer's Committee for Animal Welfare advises egg producers who participate in UEP's Animal Care Certified Program to eliminate the practice of backfilling. Your customers as well as FMI and NCCR will not approve of the practice of backfilling. It is essential that you maintain science-based guidelines. We urge you to make this correction. It is imperative that the egg industry responds quickly to this issue so that they can continue to be the leaders in animal agriculture relative to self-regulation of welfare guidelines.

DX-882

69

Cal-Maine's Largest Customers Demanded Certified Eggs



70

Plaintiffs' Conspiracy Theory about the Certified Program Fails

71

Plaintiffs' Conspiracy Theory: Not Supported by Evidence



72

Plaintiffs' Failure of Proof



73

Instruction #32: Membership

Before you can find that a Defendant was a member of the conspiracy alleged by Plaintiffs, the evidence must show that that defendant **knowingly joined** in the unlawful plan at its inception, or at some later time, **with the intent to further the purpose of the conspiracy.**

You **may not find** that a defendant or an alleged co-conspirator was a member of a conspiracy **based only** on its **association** with or **knowledge of wrongdoing.**

74

Cal-Maine and Rose Acre Compete Fiercely



75

Cal-Maine and Rose Acre Competitors, Not Conspirators



Ken Paramore



9 Q. And in that 1998 to 2008 time period, did a new competitor
10 come on scene in North Carolina?

11 A. Yes.

12 Q. Who was that?

13 A. The largest one -- Rose Acre Farms built a huge egg
14 complex in Hyde County, North Carolina. It's about an hour
15 and a half east of Greenville or my home. They built a
16 huge -- I don't know the exact number. It was a large
17 complex.

18 Q. How did you learn that Rose Acre Farms was building this
19 large complex in Hyde County, North Carolina?

20 A. Well, initially, obviously, the local news channels would
21 have stories about a new egg-laying complex coming to
22 North Carolina, et cetera.

23 As it got close to completion, I heard from
24 customers, we're getting sales calls from Rose Acre trying to
25 get our accounts.

[...]

9 Q. Now, did you consider Rose Acre to be a competitor or a
10 coconspirator during that time period, 1998 through 2008?

11 A. They were a competitor. I don't know what the co- -- they
12 were a competitor.

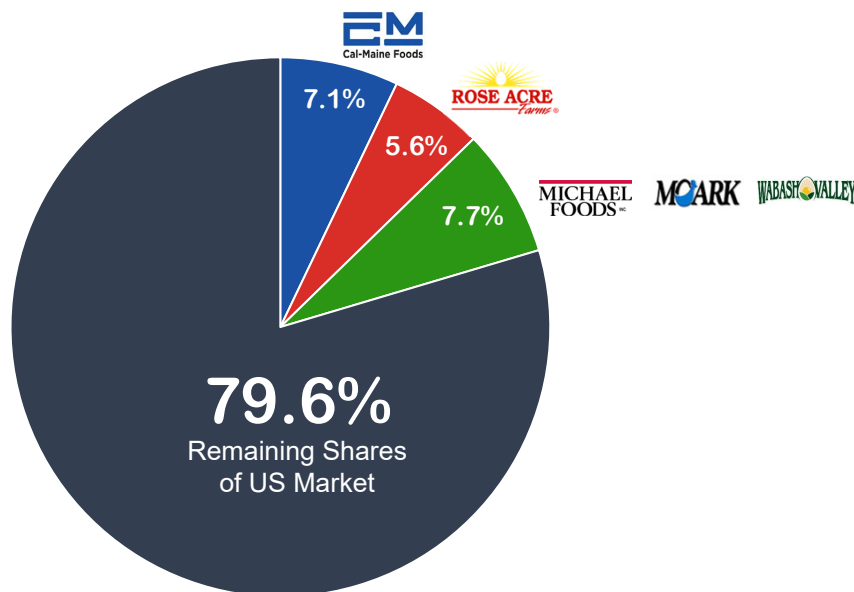
Instruction #37: Market Power

An important factor in determining whether Defendants and the alleged co-conspirators possesses market power is their market share, that is, its percentage of the products or services sold in the relevant market by all competitors.

Page 41

77

No Power to Move the Market



78

Plaintiffs' "But-For" World Doesn't Prove Injury

79

Plaintiffs' "But-For" World Is a "Caricature of Reality"



Dr. Baye

22 Q. And so this but-for world that you've created, that's
23 built on assumptions, correct?

24 A. Any model is built on assumptions, yes.

25 Q. It's a model, it's a hypothetical, correct?

1 A. It's trying to model -- yeah, it's fair to say it's a
2 caricature of reality.

Plaintiffs' "Caricature of Reality"

Focused on **Total** Flock Size and **Total** Egg Production

All Egg Producers

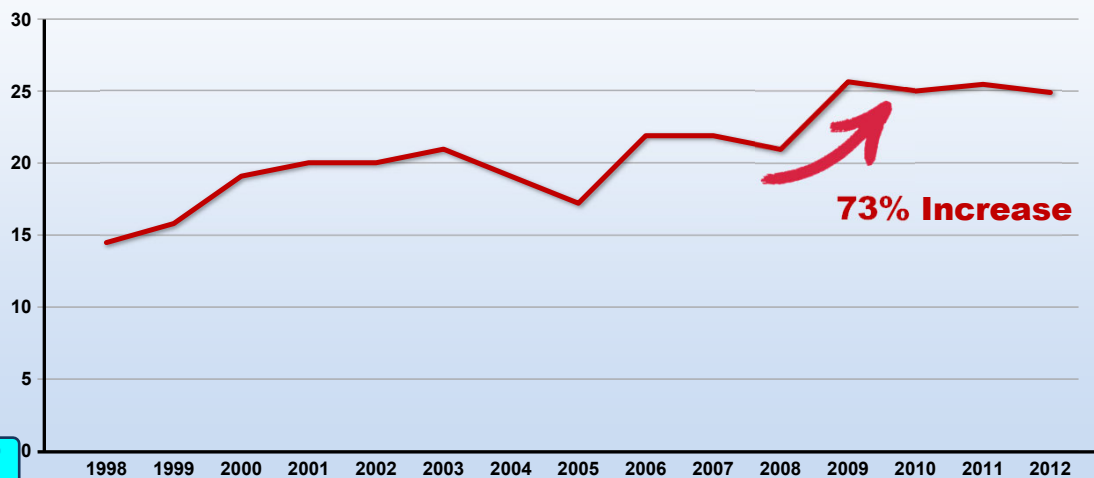
All **Across** the Country

NOTHING about Cal-Maine

81

FACT: Cal-Maine Flock Size Grew Significantly

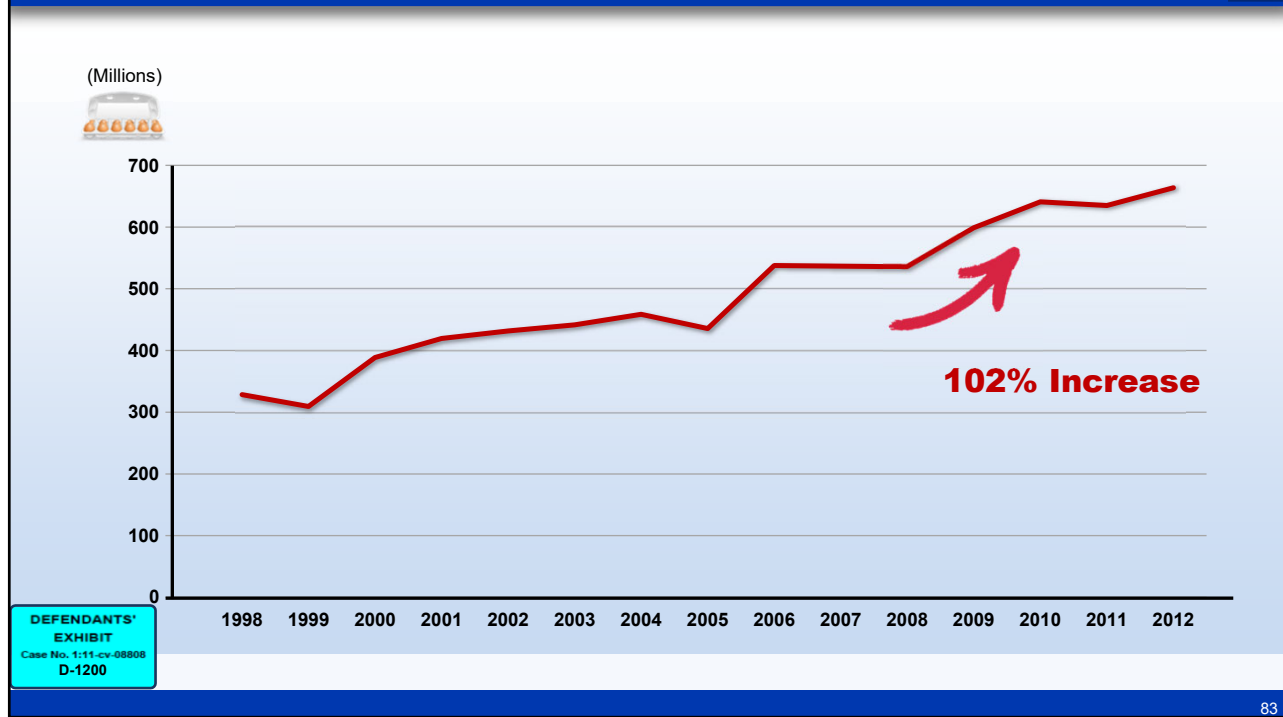
Egg-Laying Hens
(Millions)



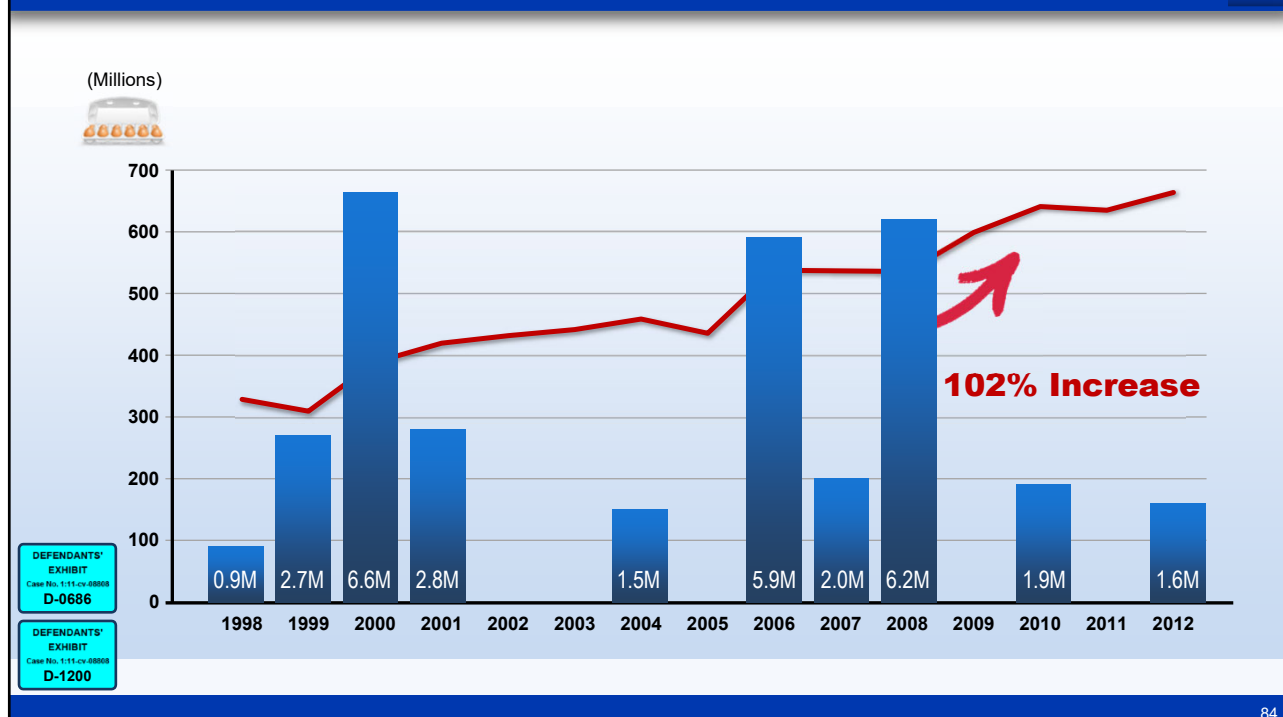
DEFENDANTS'
EXHIBIT
Case No. 1:11-cv-08808
D-1201

82

FACT: Cal-Maine's Egg Production Grew Significantly

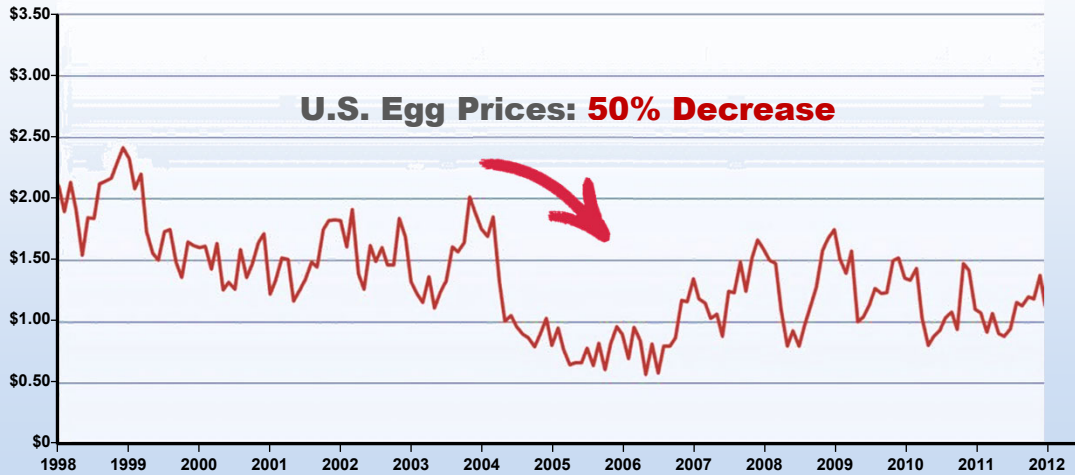


FACT: Cal-Maine's Production Doubled with Expansion



FACT: Egg Prices Collapsed

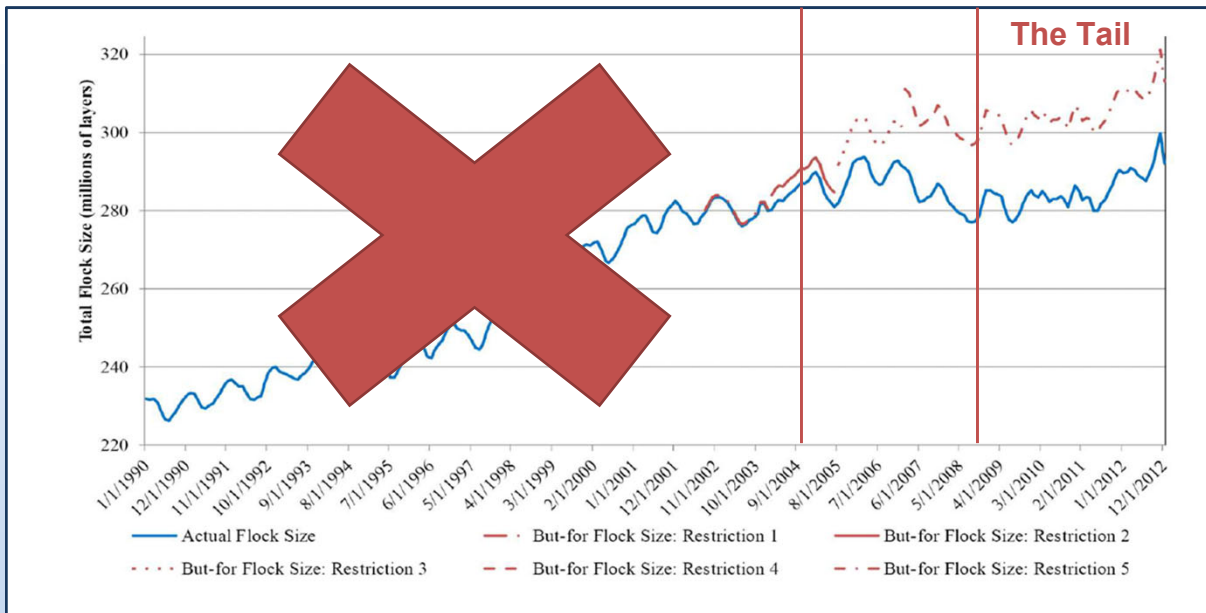
Price per Dozen
(inflation-adjusted)



DEFENDANTS'
EXHIBIT
Case No. 1:11-cv-08808
D-1164

85

Caricature: "But For" Flock Size



Plaintiffs' Demo. No. 1

86

Plaintiffs' Expert: No Valid Opinion On "Tail"



Plaintiffs' Injury "Tail" Can't Wag the Dog

Day Old Chicks Hatched After

April 1, 2002
October 1, 2003
April 1, 2005
October 1, 2006
April 1, 2008

House in Layer Houses at Square Inches White Leghorn Hen Brown Egg Layers

56 inches	63 inches
59 inches	66 inches
61 inches	68 inches
64 inches	72 inches
67 inches	76 inches



2008:
State Laws
Begin
Enacted

1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012

Dec 2007-
Dec 2009:
Great
Recession

Plaintiffs' Failure of Proof On Market

89

Jury Instruction: Proof of a Relevant Market

“In evaluating whether various products are reasonably interchangeable or reasonable substitutes for each other, you may also consider ...

- the presence or absence of specialized vendors;
- the perceptions of either industry or the public as to whether the products are in separate markets;
- the views of the Plaintiffs and Defendants regarding whom their respective competitors are; and
- the existence or absence of different customer groups or distribution channels.”

90

Plaintiffs Viewed Shell Eggs and Egg Products Separately



Kelly Tobey



4 And to be clear, Kellogg's could not use shell eggs
5 in its products, correct?

6 A. That's correct.

7 Q. So Kellogg never purchased shell eggs from any egg
8 producer, correct?

9 A. That's correct.

10 Q. And Kellogg specifically never purchased any shell eggs
11 from Cal-Maine Foods, either; isn't that right?

12 A. Not to my knowledge.



Scott Manion



17 Now, Mr. Manion, I believe you previously testified
18 that Kraft was not purchasing any shell eggs?

19 A. That is correct.

20 Q. And, in fact, you could not have used shell eggs in any of
21 the products that you were using egg products in?

22 A. No, we could not.

25 When you sent out RFPs to the various egg products
1 suppliers, you never sent an RFP out to Cal-Maine Foods, did
2 you?

3 A. I don't believe we included Cal-Maine.

Trial Tr. 3584:18-3585:9

91

Market Viewed Shell Eggs and Egg Products Separately



Gary Pickett

Egg Buyer 2004-2008



5 Q. Did you view shell eggs and egg products as different
6 markets, from your --

7 A. Yes.

8 Q. -- perspective?

9 A. Yes, sir.

10 Q. Tell the jury in your perspective how they were different.

11 A. One was a finished product, a value-added product. Shell
12 eggs are more of a commodity. You put them in, you know,
13 packaging. But there's no additional added value to those --
14 to those products.

15 When you're looking at the -- the liquid eggs, for
16 example, those weren't value-added products. So some were
17 pasteurized, some weren't. But -- so, yeah, it was -- it's,
18 yeah, a more traditional consumer packaged good business.

19 Q. Were the suppliers that you dealt with as a buyer for
20 Walmart the same for shell eggs and egg products or were they
21 different?

22 A. They were different.

Trial Tr. 4200:5-22

92

Plaintiffs' Egg Products Suppliers (2006)

UEP Certified 	Not UEP Certified 
<p>6 Producers</p>       	<p>19 Producers</p> <p>Natural Products</p>                  

93

Plaintiffs' Egg Products Suppliers (2006)

UEP Certified 	Not UEP Certified 
<p>6 Producers</p>       	<p>19 Producers</p> <p>Natural Products</p>                  

94



Cal-Maine Foods

